

STATE OF NEW YORK .
STATE TAX COMMISSION

In the Matter of the Petition

of

ST. CHARLES KITCHENS
BY GIRARD, INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Corporation Franchise :
Taxes under Article(s) 9-A of the :
Tax Law for the Year(s) ~~or~~ Period(s) :
October 1, 1972 through September 30, 1973

State of New York
County of Albany

John Huhn , being duly sworn, deposes and says that

~~He~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 13th day of September , 1978, ~~she~~ served the within

Notice of Decision by (certified) mail upon St. Charles Kitchens
by Girard, Inc.

~~(representative of)~~ the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: St. Charles Kitchens

by Girard, Inc.

Scotts Corners

Pound Ridge, New York 10576

and by depositing same enclosed in a postpaid properly addressed wrapper in a

(post office or official depository) under the exclusive care and custody of

the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative~~
~~of the)~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~(representative of the)~~ petitioner.

Sworn to before me this

13th day of September , 1978.

V.P. Wick

John Huhn

STATE OF NEW YORK.
STATE TAX COMMISSION

In the Matter of the Petition

of

ST. CHARLES KITCHENS

BY GIRARD, INC

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Corporation Franchise
Taxes under Article(s) 9-A of the
Tax Law for the ~~XXXXXX~~ Period(s)
October 1, 1972 through September 30, 1973

AFFIDAVIT OF MAILING

State of New York
County of Albany

John Huhn, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 13th day of September, 1978, she served the within
Notice of Decision by (certified) mail upon Anthony J. Pirone

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Anthony J. Pirone
119 Harrison Avenue
New Canaan, Conn.

and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative
of the) petitioner herein and that the address set forth on said wrapper is the
last known address of the (representative of the) petitioner.

Sworn to before me this

13th day of September, 1978

V. P. Wasko
ms

John Huhn



STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

September 13, 1978

**St. Charles Kitchens
by Girard, Inc.
Scotts Corners
Pound Ridge, New York 10576**

Gentlemen:

Please take notice of the **Decision**
of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **1090** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

Michael Alexander
Supervising Tax Hearing
Officer

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE TAX COMMISSION

for Redetermination of a Deficiency
or for Refund of Corporation Franchise :
Tax under Article 9-A of the Tax Law
for the Taxable Period October 1, 1972 :
through September 30, 1973.

Petitioner, St. Charles Kitchens By Girard, Inc., Scotts
Corners, Pound Ridge, New York 10576, filed a petition for
redetermination of a deficiency or for refund of corporation
franchise tax under Article 9-A of the Tax Law for the period
October 1, 1972 through September 30, 1973 (File No. 11686).

A formal hearing was waived by Anthony J. Pirone, 119 Harrison Avenue, New Canaan, Connecticut, petitioner's representative, and the case was submitted to the State Tax Commission based on the entire record contained in the file. After due consideration of said record, the State Tax Commission renders the following decision.

ISSUE

Whether the refund claimed in petitioner's amended return, based on the reduced officers' salaries and other compensation reported, was properly denied.

FINDINGS OF FACT

1. Petitioner, St. Charles Kitchens by Girard, Inc., filed a corporation franchise tax report on December 13, 1973 for the taxable period October 1, 1972 through September 30, 1973. Therein, franchise tax of \$671.00 was computed to be due, pursuant to the alternative method of computation, and said amount was paid.

2. On December 12, 1974, petitioner filed an amended return for the period in question and computed therein that the tax due was \$246.00; accordingly, a refund of \$425.00 was claimed. The amended return was stated to be predicated on an error in the amount paid officers. Officers' salary and other compensation was stated to be: Raymond G. Girard \$21,800.00; Peter M. Dean \$2,300.00.

3. By letter of August 18, 1975, the Corporation Tax Bureau denied the claim for refund in full and stated that the salaries and other compensation paid to officers and stockholders must be included in the computation of the alternative tax base.

4. Petitioner reduced the amount paid to officers from \$46,152.00 (the figure used in computing the original report) to \$24,100.00 (the figure used in the amended report).

5. The U.S. Corporation Income Tax Return for the period in question listed Raymond G. Girard as the president of petitioner. Peter M. Deane was listed as vice-president of petitioner. The amount of their compensation was listed as \$21,800.00 and \$24,352.00, respectively. The compensation received by Deane included commissions.

CONCLUSIONS OF LAW

A. That section 210 of the Tax Law imposes a tax computed on a number of bases, the computation to be employed being that one which results in the greatest tax. During the period here in issue, the computation was, in part, at the rate of 9% on 30% of the taxpayer's entire net income, plus salaries and other compensation paid to taxpayer's elected or appointed officers.

B. That a vice-president is an "elected or appointed officer."
20 NYCRR 3.20(c)

C. That the term "other compensation" employed in section 210, when applied to officers, means all other compensation of any form or nature paid to elected officers and clearly includes commissions.

D. That the petition of St. Charles Kitchens by Girard, Inc. is denied in that the original report for the period in question was correct and no refund, as asserted in the amended return, is warranted.

DATED: Albany, New York

September 13, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER